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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/782,379 | 02/19/2004 | Roger Warren | H47989.1110.1 | 3589 |

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| EXAMINER |
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HALE, GLORIA M

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| ART UNIT | PAPER NUMBER |
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3765

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01/08/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/782,379

Applicant(s)

WARREN ET AL.

Examiner

Gloria Hale

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1 the preamble states that the invention is an undergarment.

However, it is not clear as to what type of undergarment is being claimed. No undergarment structure has been claimed in the body of the claim. Applicant needs to claim specific undergarment structure in the body of the claim such as a brassiere. It is not clear as to how the support layer or adhesive layer have a design or pattern therein. Is the design or pattern printed on or somehow applied on the layers or is it within the material weave or makeup? Also, the support layer and adhesive layers are not structurally equivalent and the alternative recitation renders the claim indefinite. It also yields two different embodiments.. Only one such embodiment should be claimed in one claim. Also the term "Adhering" and "fusing" are not structurally equivalent and render the claim indefinite. Fusing implies applying heat to an adhesive or material to melt it to the other layer. Only one clearly defined embodiment should be claimed with structurally equivalent terms. Applicant needs to positively claim the invention directly and not claim broad terms that lead to multiple embodiments or combinations of inventions.

Presently it appears that claim 1 claims two lace layers with a support layer or padding

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there between the layers and adhered or laminated together. In claim 6 it is not clear as to what the "support material" encompasses or as to what or how it supports and the level of support it yields. In claim 8 there is no antecedent basis for a lower and side breast profile since the undergarment was not claimed as a brassiere in claim 1. Claim 9 is also not clear for the same reasons as claimed 1 in regard to the terms "Adhesive and fusing". It is also unclear in regard to the pattern as discussed above in regard to claim 1. Claim 13 is unclear for the same reasons as claim 8. Claim 14 is unclear for the same reasons as claim 1. It is also not clear as to what the metes and bounds of the term molding implies such as heat molding or pressure molding or both. Claim 18 is not clear for the same reasons as claim 8. Claim 19 is not clear as stated above in regard to claim 1. Claim 20 is not clear in regard to the pattern as discussed above in regard to claim 1. IN claim 25 it is not clear as to what adhesive is being claimed that includes elastic properties. In claim 26 it is not clear as to how the adhesive layer provides a pattern or as to what the pattern is and has to how it is constructed or constructed from. The adhesive itself or a material that the adhesive is applied to or constructed from. In claim 27 it is not clear as to how the adhesive provides support in selected regions. Claim 29 is also not clear in regard to the pattern. The claims are extremely broad especially claims 26-30. Wherein claim 28 actually claim two lace layers adhered together by an adhesive. Fusing requires heat and it is not clear as to how a general adhesive as claimed would fuse if heat is not applied.

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The claims have not been examined on their merits because of the indefiniteness and lack of clarity in the claims.

Conclusion

The action is not being made final so that the new counsel can amend the claims so that they are in compliance with 35 USC 112 and understandable.

IN regard to the previous counsel's remarks concerning the thermo adhesive. A specific type of thermo adhesive was not described on pages 5-6 of the original specification. All thermo adhesive are not elastic. Therefore it is not clear as to what type of adhesive is being used that would provide the elastic properties.

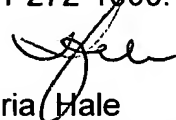
Claims focused on certain embodiments would be appreciated. Also if the invention is a brassiere it would be appreciated if it is claimed as such. The term undergarment covers a wide range of garment such as girdles and briefs that require an entirely different search.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tues.-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gloria Hale
Primary Examiner
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